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Ross J. Boyert

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FENWICK & WEST LLP  
SILICON VALLEY CENTER  
801 CALIFORNIA STREET  
MOUNTAIN VIEW, CA 94041

EXAMINER

CHOI, PETER H

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/992,352

Applicant(s)

BOYERT ET AL.

Examiner

Peter Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 25-32 and 47-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24, 33-46 and 53-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/13/01</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-24, 33-46, and 53-61, drawn to receiving and processing orders over the Internet for delivery to a delivery site, classified in class 705, subclass 7.
  - II. Claims 25-32, drawn to transport vehicles to deliver and receive (returned) goods and stations to receive and aggregate customer orders, classified in class 705, subclass 8.
  - III. Claims 47-51, drawn to tracking and management of goods, classified in class 705, subclass 1.
  - IV. Claim 52, drawn to conducting an analysis of purchasing characteristics (relative to a class of goods) of people in order to select a target location as a delivery site, classified in class 705, subclass 10.
2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the

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particulars of the subcombination as claimed because the steps of aggregating of goods and transport vehicles comprise a distribution method independent of the distribution method disclosed in invention 1.

3. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as the tracking and management of goods. See MPEP § 806.05(d).

4. Inventions I and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination IV has separate utility such as conducting an analysis of purchasing characteristics (relative to a class of goods) of people in order to select a target location as a delivery site. See MPEP § 806.05(d).

5. Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as the tracking and management of goods. See MPEP § 806.05(d).

6. Inventions II and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination IV has separate utility such as conducting an analysis of purchasing characteristics (relative to a class of goods) of people in order to select a target location as a delivery site. See MPEP § 806.05(d).

7. Inventions III and IV are directed to related processes. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, invention III is directed towards tracking and management of goods and invention IV is directed towards conducting an analysis of purchasing characteristics (relative to a class of goods) of people in order to select a target location as a delivery site.

8. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

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9. During a telephone conversation with Ed Weller on February 28, 2006, a provisional election was made without traverse to prosecute the invention of receiving and processing orders from purchasers over the Internet for delivery to a delivery site, claims 1-24, 33-46, and 53-61. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-32, and 47-52 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

10. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

11. Based on the provisional election made by Ed Weller on February 28, 2006, claims 25-32 and 47-52 have been withdrawn from further consideration by the Examiner, and claims 1-24, 33-46, and 53-61 are pending in the application and will be addressed in the art rejection made below.

***Claim Rejections - 35 USC § 102***

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12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

13. Claims 1-14, 16-24, 33, 35, 37-41, 43, 45-46, 53-55, 57-58, and 60-61 are rejected under 35 U.S.C. 102(a) as being anticipated by Jean Murphy's "Webvan: Rewriting The Rules On 'Last Mile' Delivery" (referred to hereafter as Webvan).

As per claim 1, Webvan teaches a distribution method comprising:

(a) receiving orders from ones of a group of purchasers (**orders come into the WMS system via the PeopleSoft Gateway software used by Webvan**) for delivery to a delivery site associated with said group of purchasers during a pre-arranged time period associated with said group of purchasers (**Webvan's core activity is selling and delivering grocery and non-prescription drug products; students order from Webvan and then pick up their orders at pre-established points. "We have Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, we're there with all the orders for people who live in that part of campus."**) [Paragraphs 3, 22, 5B]; and

(b) transporting goods associated with said orders to said delivery site for pick-up by said ones of said group of purchasers (**Webvan's core activity is selling and delivering grocery and non-prescription drug products; students order from**

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**Webvan and then pick up their orders at pre-established points)** [Paragraphs 3, 5B].

As per claim 2, Webvan teaches the distribution method of claim 1 wherein the orders are received via the Internet **(Webvan's online grocery business; orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraphs 5, 22].

As per claim 3, Webvan teaches the distribution method of claim 1 wherein the transporting of goods are by dedicated delivery vehicles **(Webvan is leasing a fleet of trucks and vans)** [Paragraph 5].

As per claim 4, Webvan teaches the distribution method of claim 3 wherein the orders are received via the Internet **(Webvan's online grocery business; orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraphs 5, 22].

As per claim 5, Webvan teaches the distribution method of claim 1 further comprising transporting goods from the delivery site **{Webvan has pre-established delivery points/stops on the campus of Stanford University}** to a secondary delivery site **{once the customer picks up their order from the delivery site, they**



**inevitably transport their order to a new location, such as their home, office, etc.}**  
[Paragraph 5B].

As per claim 6, Webvan teaches the distribution method of claim 1 wherein the pick-up is during a time period that is pre-arranged relative to the delivery site and not pre-arranged by ones of the group of purchasers **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

As per claim 7, Webvan teaches a distribution method comprising the steps of:

- (a) establishing an interface for the selection and ordering of goods **({provided by} the PeopleSoft Gateway software used by Webvan)** [Paragraph 22];
- (b) establishing at least one selected collective delivery site that is convenient for a particular group of prospective purchasers **(Stanford University students order from Webvan and then pick up their orders at pre-established points)** [Paragraph 5B];
- (c) taking orders from members of the group of purchasers **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** for delivery to the delivery site during a pre-arranged time period [Paragraph 22]; and
- (d) delivering the orders by dedicated delivery mechanism to the delivery site for pick up by the customers during the pre-arranged time period **{Stanford University**

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**has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

As per claim 8, Webvan teaches the method as defined in claim 7 wherein a plurality of selected delivery points are established by pre-arrangement with a plurality of companies and organizations having numerous members and employees **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

As per claim 9, Webvan teaches the method as defined in claim 7 wherein the dedicated delivery mechanism are trucks **(Webvan is leasing a fleet of trucks and vans)** [Paragraph 5].

As per claim 10, Webvan teaches the method as defined in claim 7 wherein the goods are groceries **(Webvan's online grocery business)** [Paragraphs 5].

As per claim 11, Webvan teaches a distribution system comprising:

(a) a delivery site associated with a group of purchasers **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between**

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**noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B];

(b) an order center to receive orders from one of said group of purchasers **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** for delivery to the delivery site during a pre-arranged time period associated with said group of purchasers [Paragraph 22];

(c) a vehicle to transport goods associated with said orders **(Webvan is leasing a fleet of trucks and vans)** to said delivery site for pick-up by said ones of said group of purchasers **(Webvan's core activity is selling and delivering grocery and non-prescription drug products; students order from Webvan and then pick up their orders at pre-established points)** [Paragraphs 3, 5, 5B].

As per claim 12, Webvan teaches the distribution system of claim 11 wherein the orders are received via the internet **(Webvan's online grocery business; orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraphs 5, 22].

As per claim 13, Webvan teaches the distribution system of claim 11 wherein the vehicle is a dedicated delivery vehicle **(Webvan is leasing a fleet of trucks and vans)** [Paragraph 5].

As per claim 14, Webvan teaches the distribution system of claim 13 wherein the orders are received via the Internet **(Webvan's online grocery business; orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraphs 5, 22].

As per claim 16, Webvan teaches the distribution system of claim 11 further comprising a second vehicle to transport selected ones of said goods from the delivery site to at least one secondary delivery site **(orders are trucked to strategically located transfer stations where they are moved into vans that serve specific neighborhoods; totes are placed on dollies designated for particular geographic zones, which are then rolled onto a truck that go to cross-dock stations where they are organized by route and transferred to chilled delivery vans)** [Paragraphs 14, 30-31].

As per claim 17, Webvan teaches the distribution system of claim 11 wherein the pick-up is during a time period that is pre-arranged relative to the delivery site and not pre-arranged by ones of the group of purchasers **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

As per claim 18, Webvan teaches a distribution method comprising:

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(a) receiving goods associated with orders (**orders come into the WMS system via the PeopleSoft Gateway software used by Webvan; from the distribution center hubs, orders are trucked to strategically located transfer stations**), said order including a selected pre-arranged delivery point, the pre-arranged delivery point being associated with a customer associated with the order but not pre-arranged by said customer **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraphs 14, 22, 5B]; and

(b) delivering said goods to the pre-arranged delivery point for customer pickup **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

As per claim 19, Webvan teaches the distribution method of claim 18 wherein said delivering said goods is during a pre-arranged time period **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

As per claim 20, Webvan teaches the distribution method of claim 19 further comprising receiving return goods at said pre-arranged delivery point during said pre-

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arranged time period **(each driver, or courier, carries a wireless hand-held device that prints out a receipt and an itemized list of the order for the customer that also gives the courier access to all of the customer's back orders so if there is a complaint about a product previously delivered, the courier can check the records and give a credit on the spot; {when customers are not 100% satisfied with the quality of produce received, the next time the courier comes into the customer's home, the customer voice their dissatisfaction to the courier who can look it up and take that amount off the current bill})** [Paragraphs 41, 7C].

As per claim 21, Webvan teaches the distribution method of claim 18 further comprising:

providing to at least one supplier at least one request for said goods in response to said orders **(Webvan sends purchase orders to harbringer.net, who takes that information, and provides fast and reliable communications with suppliers)** [Paragraph 47].

As per claim 22, Webvan teaches the distribution method of claim 21 wherein said delivering said goods is during a pre-arranged time period **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

As per claim 23, Webvan teaches the distribution method of claim 18 wherein the goods are received from a goods aggregation system **(the Webvan order picking system; orders are picked, scanned and placed into totes)** [Paragraphs 16-30].

As per claim 24, Webvan teaches the distribution method of claim 23 wherein said delivering said goods is during a pre-arranged time period **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

As per claim 33, Webvan teaches a distribution method comprising:

(a) receiving a plurality of orders, each order indicative of a package of goods associated with a customer **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraph 22];

(b) receiving a plurality of groups of packaged goods, each packaged goods including the goods related to an order, each group including packaged goods having a common pre-arranged destination delivery point for pickup by the customer associated with the order **(the Webvan order picking system; orders are picked, scanned and placed into totes)** [Paragraphs 16-30]; and

(c) allocating a transport vehicle for each pre-arranged destination delivery point **(vans serve specific neighborhoods)** [Paragraphs 13].

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As per claim 35, Webvan teaches a delivery system comprising:

- (a) a receiving site to receive a plurality of groups of packaged goods, each packaged goods including the goods related to an order, each order indicative of a package of goods associated with a customer, each group including packaged goods having a common pre-arranged destination delivery site for pickup by the customer associated with the order **(at Webvan distribution centers, orders are picked, scanned and placed into totes)** [Paragraphs 16-30]; and
- (b) at least one transport vehicle to delivery to each pre-arranged destination delivery site groups of packaged goods assigned to the at least one transport vehicle **(Webvan is leasing a fleet of trucks and vans; vans serve specific neighborhoods)** [Paragraphs 5, 14].

As per claim 37, Webvan teaches a method for processing an order for goods, comprising:

- (a) receiving an order for purchase of goods from a customer **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraph 22]; and
- (b) providing order information and destination information to a delivery system, the destination information including a pre-arranged delivery point being associated with a customer associated with the order but not pre-arranged by the customer **(the Descartes scheduling optimizer interfaces directly with the web site)** [Paragraphs 37].



As per claim 38, Webvan teaches the method of claim 37 further comprising providing user interface information for communication with the customer **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan; the Descartes scheduling optimizer interfaces directly with the website)** [Paragraphs 22, 37].

As per claim 40, Webvan teaches an order center for processing an order for goods, comprising:

(a) a communication interface for receiving an order for purchase of goods from a customer **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraph 22]; and

(b) an order processor for providing order information and destination information to a delivery system, the destination information including a pre-arranged delivery point being associated with a customer associated with the order but not pre-arranged by the customer **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraph 22].

As per claim 41, Webvan teaches the order center of claim 40 whereas the order processor provides user interface information via the communication interface for communication with the customer **(orders come into the WMS system via the**

**PeopleSoft Gateway software used by Webvan; the Descartes scheduling optimizer interfaces directly with the website)** [Paragraphs 22, 37].

As per claim 43, Webvan teaches a method comprising:

- (a) receiving order information and delivery destination information associated with a plurality of customer orders (**orders come into the WMS system via the PeopleSoft Gateway software used by Webvan**), the delivery destination information includes one of at least one pre-arranged delivery points associated with a customer associated with the order but not pre-arranged by the customer [Paragraph 22];
- (b) generating a plurality of packaged goods associated with said order information (**devising a tote load-plan {to fulfill customer orders}**) [Paragraph 23];
- (c) grouping ones of the plurality of packaged goods having a common delivery destination (**totes are placed on dollies designated for particular geographic zones; trucks are organized by route**) [Paragraphs 30-31]; and
- (d) assigning said groups of packaged goods to delivery vehicles based on said common delivery destinations (**orders are trucked to strategically located transfer stations where they are moved into vans that serve specific neighborhoods; totes are placed on dollies designated for particular geographic zones; trucks are organized by route**) [Paragraphs 14, 30-31].

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As per claim 45, Webvan teaches the method of claim 43 further comprising ordering from at least one supplier goods associated with said plurality of customer orders **(Webvan sends purchase orders to harbringer.net, who takes that information, and provides fast and reliable communications with suppliers)** [Paragraph 47].

As per claim 46, Webvan teaches the method of claim 45 wherein said receiving order information and said ordering from at least one supplier occur within a 24 hour period **(customer can ask for next-day delivery; to ensure that inventory will be in the warehouse by the time the order is filled, Webvan sends purchase orders to harbringer.net, which takes that information and transmits it electronically {to suppliers})**, and said assigning said groups of package goods includes assigning said groups of packaged goods to delivery vehicles for delivery to said at least one pre-arranged delivery points during a pre-arranged timed period **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraphs 12, 46, 47, 5B].

As per claim 53, Webvan teaches a method comprising:

(a) selecting a group of persons having a common characteristic associated with a region during a time interval **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at**

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**each Webvan stop with all the orders for people who live in that part of campus}**

[Paragraph 5B];

(b) establishing at least one selected delivery point in said region **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B]; and

(c) receiving orders for goods from ones of said group of persons for delivery to the delivery site for pickup by said ones of said group of persons during a pre-arranged time period of said time interval **(Stanford University students order from Webvan and then pick up their orders at pre-established points {at pre-arranged time periods such as on Tuesdays between noon and 3:00})** [Paragraph 5B].

As per claim 54, Webvan teaches a method for processing an order for goods, comprising:

(a) receiving an order for purchase of goods from a customer **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)**

[Paragraph 22]; and

(b) providing order information and destination information **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** to a goods aggregation system **(the Webvan order picking system; orders are picked, scanned and placed into totes)**, the destination information including a pre-arranged

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delivery point being associated with a customer associated with the order but not pre-arranged by the customer [Paragraphs 16-30].

As per claim 55, Webvan teaches the method of claim 54 further comprising providing user interface information for communication with the customer (**orders come into the WMS system via the PeopleSoft Gateway software used by Webvan; the Descartes scheduling optimizer interfaces directly with the website**) [Paragraphs 22, 37].

As per claim 57, Webvan teaches an order center for processing an order for goods, comprising:

(a) a communication interface for receiving an order for purchase of goods from a customer (**orders come into the WMS system via the PeopleSoft Gateway software used by Webvan**) [Paragraph 22]; and

(b) an order processor for providing order information and destination information (**orders come into the WMS system via the PeopleSoft Gateway software used by Webvan**) to a goods aggregation system (**the Webvan order picking system; orders are picked, scanned and placed into totes**), the destination information including a pre-arranged delivery point being associated with a customer associated with the order but not pre-arranged by the customer [Paragraphs 16-30].

As per claim 58, Webvan teaches the order center of claim 57 whereas the order processor provides user interface information via the communication interface for communication with the customer **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan; the Descartes scheduling optimizer interfaces directly with the website)** [Paragraphs 22, 37].

As per claim 60, Webvan teaches a distribution method comprising:

(a) receiving orders from ones of a group of purchasers for delivery to a delivery site associated with said group of purchasers and not pre-arranged with said group of purchasers **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraph 22]; and

(b) transporting goods associated with said orders to said delivery site for pick-up by said ones of said groups of purchasers **(Webvan's core activity is selling and delivering grocery and non-prescription drug products; students order from Webvan and then pick up their orders at pre-established points)** [Paragraphs 3, 5B].

As per claim 61, Webvan teaches a distribution method comprising:

(a) establishing an interface for the selection and ordering of goods **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** [Paragraph 22];

(b) establishing at least one selected collective delivery point that is convenient for a particular group of prospective purchasers and not pre-arranged with said group of purchasers **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B];

(c) taking orders from members of the group of purchasers **(orders come into the WMS system via the PeopleSoft Gateway software used by Webvan)** for delivery to the delivery site during a pre-arranged time period [Paragraph 22]; and

(d) delivering the orders by dedicated delivery mechanism to the delivery site for pick up by the customers during the pre-arranged time period **{Stanford University has Webvan stops on campus and, for example, on Tuesdays between noon and 3:00, Webvan is at each Webvan stop with all the orders for people who live in that part of campus}** [Paragraph 5B].

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claims 15, 34, 36 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jean Murphy's "Webvan: Rewriting The Rules On 'Last Mile' Delivery" (referred to hereafter as Webvan).

As per claim 15, Webvan does not explicitly teach the distribution system of claim 13 wherein the vehicle includes an identifier of an entity associated with the delivery site.

Official Notice is taken that it is old and well known in the art for vehicles to bear an identifier of an entity associated with a delivery site. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Webvan to include the step of providing delivery vehicles with an identifier associated with the delivery site, because the resulting combination would provide a unique visual representation that is indicative of an authorization/agreement (such as a delivery or parking permit) between the company and the entity associated with a delivery site (such as the property owner) that would enable the company to make deliveries at said delivery site, or, alternatively, may provide the company with a means of displaying the intended destination (the delivery site) to prospective customers, increasing customer awareness with the service region of the company, which may lead to an increase in customer interest and orders, or, alternatively, provide a cross-promotional means of advertising both the company and the entity associated with the delivery site.



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As per claim 34, Webvan does not explicitly teach the distribution method of claim 33 wherein the allocating a transport vehicle includes selecting a transport vehicle from a group of transport vehicles of different storage volumes based on the volume of the groups of packaged goods.

However, Official Notice is taken that it is old and well known in the art to use transport vehicles with sufficient space to transport the items that comprise a customer's order. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Webvan to include the step of allocating transport vehicles based on a storage volume based on a volume of the groups of packaged goods, because the resulting combination would enable the company to transport all items of a customer's order together, avoiding the need for multiple transport vehicles to accommodate a single order, reducing the costs associated with additional transport vehicles (fuel cost, fleet maintenance, personnel staffing requirements and costs, etc.) and also maximizing the number of transport vehicles available for assignment to other delivery regions/zones/areas.

As per claim 36, Webvan does not explicitly teach the delivery system of claim 35 wherein a transport vehicle is allocated to deliver ones of said groups based on a storage volume based on a volume of the groups of packaged goods.

However, Official Notice is taken that it is old and well known in the art to use transport vehicles with sufficient space to transport the items that comprise a customer's order. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Webvan to include the step of allocating transport vehicles based on a storage volume based on a volume of the groups of packaged goods, because the resulting combination would enable the company to transport all items of a customer's order together, avoiding the need for multiple transport vehicles to accommodate a single order, reducing the costs associated with additional transport vehicles (fuel cost, fleet maintenance, personnel staffing requirements and costs, etc.) and also maximizing the number of transport vehicles available for assignment to other delivery regions/zones/areas.

As per claim 44, Webvan teaches the method of claim 43 further comprising:

(b) **processing return goods ({when customers are not 100% satisfied with the quality of produce received, the next time the courier comes into the customer's home, the customer voice their dissatisfaction to the courier who can look it up and take that amount off the current bill})** [Paragraph 7C].

Webvan does not explicitly teach the step of processing returned goods for shipment to the source of origin or restocking of return goods. However, Official Notice is taken that it is old and well known in the arts for returned goods to be restocked or returned to its source of origin. It would have been obvious to one of ordinary skill in the

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art at the time of invention to modify the teachings of Webvan to include the steps of processing return goods for shipment to source of return goods or restocking of return goods, because the resulting combination would enable a company to replace, refund, or repair items that customers are unsatisfied with, incorrectly sent, or defective, which enables companies to maintain or improve customer satisfaction.

Webvan does not explicitly teach (a) receiving return goods provided to the delivery vehicles at said common delivery destinations. However, Official Notice is taken that the step of returning goods to the selling company/merchant is old and well known in the art.

Returning goods at the delivery destination is equivalent to returning goods to a brick and mortar store, as said destination acts as an extension of the company's store. Since the delivery vehicle will inevitably return to a company-owned facility, any return goods provided to said delivery vehicle will expeditiously returned to the company for return/refund/replacement processing. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Webvan to allow customers to return goods to delivery vehicles at delivery stations because the resulting combination would save customers the trouble of going to brick and mortar stores in order to return the goods, and enable said returned goods to be expeditiously processed for return/refund/replacement.

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16. Claims 39, 42, 56 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webvan as applied to claims 37, 40, 54, and 57 above, and further in view of Peapod.

As per claim 39, Webvan does not explicitly teach the method of claim 37 further comprising receiving payment for said order from said customer.

However, Peapod enables payment for delivery to be made by check, charge, or Peapod Electronic Payment. Peapod also requires members to have a valid Discover Card, MasterCard, or Visa [pages 5, 9].

Both Webvan and Peapod are directed towards the analogous field of ordering groceries online for delivery. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Webvan to include the step of receiving payment for an order from a customer, because the resulting combination enables the company to be compensated for the services they provide and the products they offer to customers.

As per claim 42, Webvan does not explicitly teach the order center of claim 40 further comprising a website manager for providing website information associated with catalog for goods to the customer.

However, Peapod provides members with access to over 20,000 grocery and drugstore items with the click of a computer mouse [page 3]. Peapod lets you view a picture and nutritional content before purchasing an item, and also enables the user to sort items by various criteria like price, price/unit, total calories, fat, protein, carbohydrates, cholesterol, sodium, and whether or not an item is Kosher [Page 5]. The Peapod software contains more than 18,000 available items, which are updated daily [Page 10].

Both Webvan and Peapod are directed towards the analogous field of ordering groceries online for delivery. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Webvan to include the step of providing website information associated with catalog for goods to the customer, because the resulting combination would enable the company to alert members/users to price changes, product availability, sales, and nutritional information.

As per claim 56, Webvan does not explicitly teach the method of claim 54 further comprising receiving payment for said order from said customer.

However, Peapod enables payment for delivery to be made by check, charge, or Peapod Electronic Payment. Peapod also requires members to have a valid Discover Card, MasterCard, or Visa [pages 5, 9].

Both Webvan and Peapod are directed towards the analogous field of ordering groceries online for delivery. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Webvan to include the step of receiving payment for an order from a customer, because the resulting combination enables the company to be compensated for the services they provide and the products they offer to customers.

As per claim 59, Webvan does not explicitly teach the order center of claim 57 further comprising a website manager for providing website information associated with catalog of goods to the customer.

However, Peapod provides members with access to over 20,000 grocery and drugstore items with the click of a computer mouse [page 3]. Peapod lets you view a picture and nutritional content before purchasing an item, and also enables the user to sort items by various criteria like price, price/unit, total calories, fat, protein, carbohydrates, cholesterol, sodium, and whether or not an item is Kosher [Page 5]. The Peapod software contains more than 18,000 available items, which are updated daily [Page 10].

Both Webvan and Peapod are directed towards the analogous field of ordering groceries online for delivery. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Webvan to include the

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step of providing website information associated with catalog for goods to the customer, because the resulting combination would enable the company to alert members/users to price changes, product availability, sales, and nutritional information.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Matsumori (US Patent #6,246,998) teaches a system and method for home grocery shopping.

Liberman (US Patent #6,871,184) teaches a method of delivering groceries purchased over the Internet.

### **References discussing online grocery shopping:**

- Melinda Wilson's "Great Scott! Now You Can Shop Via PC"
- Loretta Roach's "Peapod's Online Success Sparks Expansion"
- Laura Liebeck's "Grocery Shopping In Cyberspace"
- Greg Hassell's "Randalls Shoppers Online Can Avoid Check-Out Line"
- "NetGrocer Launches the First Nationwide Interactive Grocery Store"
- "NetGrocer to Provide Online Grocery Shopping for AT&T Market Square"

- "Peapod Growing Nationwide With Dry Goods"
- Lisa Romano's "Frozens Hope Aboard Consumer-Direct Shopping"
- Justin Hibbard's "Sold On The Net"
- Michael Pearce's "From Carts to Clicks"
- Worth Wren Jr.'s "Ablertson's Expects Online Grocery Shopping to Boom"
- "NetGrocer Unveils New Business Model and Launches New Site"
- Carolyn Said's "Online Beats In Line: Buying Groceries on the Web takes the hassle out of shopping"
- Linda Himelstein's "Webvan Service Is, Well, Promising"
- Linda Himelstein's "Can You Sell Groceries Like Books? Louis Borders' online supermarket may be the most innovative E-commerce venture to date. If Webvan succeeds, the rewards will be huge"
- "Click-On-This (Frrester Research predicts that cyber-grocery sales will reach \$10.8 billion by 2003"
- Streamline.com (archived 10/13/1999)
- "Ardent Software: Ardent Software Powers E-Commerce CRM for Online Grocery Leader HomeRuns.com"
- Carol Emert's "Webvan Delivers the Goods: For E-Tailer, Today It's Food, but Tomorrow – the World"
- Reed Fujii's "Safeway Grocery Chain Tests Internet Market in California"
- Peapod.com (archived 3/3/00)
- Alice Cuneo's "Peas Fill Up the Pod"



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- Leah Ward's "Safeway to Form Alliance with Dallas-Based Online Grocer"
- Paul Ower's "Groceries Online Publix To Offer Customers Home Delivery"
- Rusty Weston's "Return of the Milkman"
- Debbie Howell's "Webvan: The Grocer With A Business Plan That Delivers"
- Sonya Colberg's "Dot-com Firm Offers Online Food Shopping"
- Kevin Maney's "Webvan Lugs a Big Deam: Company Hopes Food Will Whet Appetites for a Retail Revolution"
- Sandy Graham's "The coming of grocery.com"
- Ann Merrill's "Upscale Convenience Shoppers steering their carts toward the new Woodbury Kowalski's Market – a "showcase among grocery stores" – will find amenities such as salon services, takeout food and online ordering"
- "GroceryWorks and Randalls Food Markets Team Up To Bring Oline Grocery Delivery Service to Austin"
- "Carrollton, Texas-Based Online Grocery Company Forms Alliance with Safeway"
- Marcelene Edwards' "Food to your front door Albertsons.com's home-delivery service keeps growing in South Sound"

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Choi whose telephone number is (571) 272 6971. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PC

Peter Choi  
Examiner  
Art Unit 3623

March 6, 2006

*Susanna Diaz*  
SUSANNA M. DIAZ  
PRIMARY EXAMINER  
*Au3623*